

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 93-0077 CS
Controlled Substance Excise Tax
For The Tax Periods: 1992

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ISSUE

Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5

The taxpayer protests assessment of controlled substance excise tax.

STATEMENT OF FACTS

On September 10, 1992, taxpayer allegedly possessed marijuana. Based on taxpayer's alleged possession and of marijuana, the Department issued a jeopardy assessment against the taxpayer on December 29, 1992. The taxpayer filed a protest of the assessment dated January 14, 1993.

More facts will be provided as necessary.

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Taxpayer was a passenger in a car while a transaction involving marijuana took place between the driver and an undercover police officer. During the hearing, the taxpayer stated that he knew about the transfer of marijuana because he was in the car but did not actually possess the marijuana at any time during the transaction. Pursuant to a Probable Cause Affidavit in taxpayer's file, taxpayer merely "observed the transaction". In this case, taxpayer neither possessed, nor delivered, nor manufactured the marijuana upon which tax was assessed.

FINDING

The taxpayer's protest is sustained.